

SOCIAL SECURITY DISABILITY - NUTS AND BOLTS

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I. IMPORTANT FACTS ABOUT THE SOCIAL SECURITY DISABILITY PROGRAM¹

- The disability program is an important source of insurance for the 160 million covered workers and their families.
- In 2010, a twenty (20) year old worker has a thirty (30) percent chance of becoming disabled before reaching retirement age.
- At the end of 2009, the Social Security Administration (SSA) disbursed disability benefits to approximately 9.4 million disabled workers and their dependents.
- For the average wage earner with a family, Social Security DI benefits are equivalent to \$465,000 disability insurance policy.
- For low-wage earners, disability income replaces approximately sixty (60) percent of past earnings if the worker is single and eighty three (83) per cent of earnings if the worker has dependents; for medium wage earners, the replacement level is approximately forty-four (44) percent if single and sixty-six (66) percent with dependents.
- In 2009, the average monthly benefit for a disabled worker who has a spouse and children is approximately \$1,793.
- There are twenty seven (27,000,000) million disabled individuals (age 16 or older) living in the United States.²
- Five million (5,000,000) out of 27,000,000 million disabled individuals over 16 are working.
- The unemployment rate for disabled individuals currently is 16.4% in July 2010. The unemployment rate for nondisabled is 9.5% in July 2010.
- The unemployment rate for disabled individuals with less than a high school education currently is 18.7% in July 2010. The unemployment rate for nondisabled individuals in this category is 14.4%.

¹ Important facts about Social Security Disability were obtained through the National Committee to Preserve Social Security and Medicare.

² United States Department of Labor Statistics reported in the August 26, 2010 Wall Street Journal at A5.

- The unemployment rate for disabled individuals with a high school degree with 13.4 % in July 2010. The unemployment rate for nondisabled individuals in this category is 9.5%.
- The unemployment rate for disabled individuals with some college education is 13.5% in July 2010. The unemployment rate for nondisabled individuals in this category is 7.7%.
- The unemployment rate for disabled individuals with a college degree is 8.3% in July 2010. The unemployment rate for nondisabled individuals in this category is 4.5%.
- The unemployment rate for male disabled individuals is 15.1% in July 2010. The unemployment rate for nondisabled males is 10.1%.
- The unemployment rate for female disabled individuals is 13.8% in July 2010. The unemployment rate for nondisabled males is 7.8%.

According to a 2010 survey by the National Organization on Disability (NOD),

- 21% of all adult disabled people are employed compared with 59% of people without disabilities.
- 43 % of people with disabilities advise that they have encountered one or more forms of discrimination in the workplace.
- 37% of disabled people report that they are unemployed because they could not receive any type of accommodation.

SOCIAL SECURITY DISABILITY AND ITS IMPACT ON OTHER AREAS OF LAW

Social Security disability benefits impact and interface with several different areas of law:

- Elder Law - Social Security disability benefits may make someone eligible for either Medicare or Medicaid to cover health insurance expenses (so-called dual eligible) and provide continuing source of income if nursing home or assisted living is required. Special needs or SSI trusts are frequently required if the claimant has assets that may disqualify him or her for SSI benefits.
- Employment Law – Severance benefits may be collected without an offset with Social Security disability benefits. Unemployment benefits and Social Security disability benefits in theory may be collected at the same time. However, you should discourage the claimant from attempting to do both at the same time.
- ERISA – Social Security disability benefits and receipt of long term and short term disability benefits are subject to offsets so that the insurer may use the proceeds of social security disability benefits to reduce the contractual amount owed to the claimant. A finding of eligibility for Social Security disability is not necessarily dispositive of either a long term or short term disability claim.
- Estate and Trust Law – Survivors Social Security disability benefits may be obtained depending on the age of the survivor, over 50 and such benefits are generally not subject to inheritance taxes.
- Family Law – Alimony, Child Support, health insurance coverage and timing of when to seek a divorce versus a separation may be affected. If one is married for at least ten years, a spouse may be eligible for additional social security disability benefits.
- Personal Injury and Workers Compensation benefits – Settlements of such cases and health insurance coverage to cover medical expenses resulting from either the personal injury or workers compensation injury require special attention. There are no offsets against either personal injury or workers compensation settlements by collecting Social Security disability benefits. Generally, receipt of personal injury or workers compensation benefits from a settlement do not make one ineligible for benefits based on one's own earning record.
- Veterans Benefits – Generally, veterans may receive both Social Security disability benefits and veterans benefits at the same time if the veterans injury is service connected. If the veterans injury is not service connected, one needs to obtain SSI benefits before applying for non service connected disability benefits.

Social Security disability benefits however may affect whether or not a claimant is eligible for service connected aid and attendance benefits through the Veterans Administration.

II. THE SEVEN TYPES OF SOCIAL SECURITY DISABILITY BENEFITS

- Disability Insurance Benefits
- Supplemental Security Income benefits for Adults
- Supplemental Security Income benefits for Children
- Disabled Adult Child's benefits
- Widow's or Widower's benefits
- Divorced Survivor's benefits
- Dependent parents benefits

Each of the above listed benefits has their own separate standards concerning disability. Important questions to ask the claimant include the following to determine eligibility for each of the seven previously listed benefits:

- How old is the claimant?
- Did the claimant ever receive disability benefits?
- Is the claimant working and when may the claimant ever work?
- If the claimant can work, how much can the claimant earn before losing disability benefits and/or health insurance?
- How long will the disability benefits last?
- Are the disability benefits means tested?
- Does the claimant have to prove both financial need and disability?
- Is the claimant married and/or is the spouse still alive?
- If the claimant was married, how long was the claimant married to a deceased spouse?

- What health insurance benefits are available through the disability benefit program?
- Is the claimant eligible for multiple disability benefit programs?

TYPES OF DISABILITY BENEFITS

1. DISABILITY INSURANCE BENEFITS (DIB)

DIB benefits are payable to those individuals who are disabled to work as defined by SSA and who are “insured”, that is, generally, who have worked and paid FICA taxes into the Social Security system for five (5) out of the last ten (10) years. In order to receive DIB benefits, one must cease “performing substantial, gainful activity” as defined by SSA (Translation - stop working and earning money). Workers who become disabled between age 24 and 31 can qualify for disability benefits if they worked half the time between age 21 and the time that they became disabled. Persons disabled before age 24 are eligible if they have earned six (6) credits in the three (3) year period ending when the disability started. Claimants disabled and recovered before age thirty one (31) and again disabled after age thirty one (31) may be eligible if they worked half the time after age twenty one (21) through the calendar quarter of their second disability, excluding the first period of disability. The minimum number of quarters generally required under this alternate test is six (6). Special rules also apply for disability based on blindness.

One can continue to receive passive or unearned income. There is no financial means test - meaning that a potential claimant can be a multi-millionaire and still apply for and receive DIB.

In order to receive DIB benefits, one must prove disability, which is defined as “person’s inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months”. It requires more than just a physician stating that you cannot do your previous job or occupation. Do you have to actually be out of work for twelve months in order to apply for DIB? No, one can apply long before twelve months if the medical condition is expected to last for more than twelve months.

If one does not prove disability and have sufficient quarters from the onset date of disability, Social Security will not award DIB benefits. The failure to prove sufficient quarters by the date last insured using the five out of the last ten year formula means that DIB benefits are no longer available but other benefits may be available.

DIB is receivable until normal retirement age. There is no penalty for receiving DIB until one reaches normal retirement age. If an individual remains disabled, one may stay on DIB until normal retirement age, not have to retire early at age 62 and receive a higher retirement benefit for the rest of one’s life.

Once the disability evaluation requirements have been met and the disability has been

proven, disability payments will begin after a five (5) month waiting period. The waiting period can stretch back 18 months prior to the date of the application for benefits, provided the claimant was found disabled this entire time. In that case, benefits can be awarded one year prior to the date of application. Benefits are payable starting with the sixth month after the onset of disability and continue through the second month after it ends. Benefits continue until the disability improves or the recipient returns to substantial gainful work or reaches regular retirement age.

Individuals that qualify for DIB can work once they are determined to be disabled by the Social Security Administration and earn up to approximately \$900 a month (not considered gainful) and keep their disability benefits. In addition, claimants are also permitted to have a nine (9) month trial work period earning unlimited amounts of money and be reevaluated for continued DIB. DIB to adults also results in payments to children of DIB recipients until they graduate from high school at age 18 or 19 if living at home and not graduating. Spousal benefits (regular retirement) are also available if the spouse is at least age 62. Importantly, DIB recipients under 65 are eligible for Medicare, which eligibility begins 29 months after they become eligible for DIB.

2. SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS FOR ADULTS

SSI benefits are available to adults over age eighteen. SSI, unlike DIB, is not based on work. Rather, it is a means tested program. Specifically, an individual and/or unmarried adults living together must have no more than \$2,000 in assets. Married couples may have up to \$3,000 in assets. Unlike DIB mentioned above, one can work and still be eligible for SSI benefits prior to a disability determination by the Social Security Administration. However, there is a dollar for dollar reduction from SSI benefits when one is working. Further, earning more than \$650 per month may jeopardize both SSI and Medicaid coverage.

SSI like DIB for adults requires that you satisfy the same standard that a claimant's inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

SSI benefits unlike DIB benefits are receivable the month after the date of application with no five (5) month waiting period. The amount is currently capped at \$674 per month (subject to a twenty (20) dollar allowance) reducing the benefits to \$654 per month. Unlike Medicare, SSI recipients are covered by Medicaid and receive such benefits as soon as SSA determines that the claimant is disabled based on an SSI application. SSI recipients can stay on SSI benefits for a lifetime subject to satisfying the disability requirements.

3. SUPPLEMENTAL SECURITY INCOME BENEFITS – FOR CHILDREN

The same means tested program applies to SSI benefits for children based on a family's assets.

However, for children, the disability requirement is different. You must

demonstrate either that the child meets a listing (See attached materials at the end of this presentation) and/or that the child has a severe disabling condition.

SSI benefits for children as with adults are receivable immediately. The amount is currently capped at \$674 per month. Unlike Medicare, SSI recipients are covered by Medicaid and receive such benefits as soon SSA determines that they are disabled. SSI benefits for children are also covered under the Medicaid not the Medicare program.

When a child reaches age 18, they can continue to receive SSI benefits as an adult or they may eligible for Disabled Adult Child Benefits.

4. DISABLED ADULT CHILDREN'S BENEFITS

Children that develop disabilities prior to age 22 may be eligible for disabled adult children's benefits. These benefits are granted to children who prove disability that begins before age 22 and whose parents become deceased or disabled or reach retirement age and voluntarily retire. Either parent may be deceased or disabled or retired in order to qualify for this type of benefit, so long as the parent has worked and is insured under the Act. It makes no difference how many assets that the disabled adult child has at the time for applying for these benefits. However, the adult child must be unmarried.

In order to qualify, the child must have experienced the disability or condition before age 22. In addition, the child must satisfy the same disability standards for DIB listed above.

The benefit amount payable to the Disabled Adult Child is based on either of the parents' earnings records. The benefits are potentially lifetime subject to cost of living allowance increases each year. The Disabled Adult Child may be covered by the Medicare or Medicaid program depending on whether the child was or was not eligible for SSI previously prior to age 22 and/or which health insurance program is better for the disabled adult child. Accordingly, there may be the same twenty nine month (29) month gap in coverage because of Medicare's current requirements.

The Disabled Adult Child may also be eligible for SSI if they are unable to satisfy the requirements of a Disabled Adult Child.

5. DISABLED WIDOW OR WIDOWER'S BENEFITS

These benefits are paid to individuals who are at least fifty (50) years of age and have become disabled within seven (7) years after the husband or wife died or within seven (7) years after the claimant last drew benefits based on either the mother's or father's earnings record from Social Security. You then can obtain Disabled Widow or Widower's benefits.

In order to qualify, the widow or widower must generally meet a listing (see materials at the end of this presentation) or demonstrate a severe impairment in order to qualify for these type of benefits.

The benefit amount payable to the Disabled Widow or Widower is based on the deceased spouse's earnings record. The Disabled Widow or Widower is covered by the Medicare not the Medicaid program. Accordingly, there is the same twenty nine month (29) month gap in coverage because of Medicare's current requirements.

The Disabled Widow or Widower may be eligible for DIB based on her own earnings record or SSI or remain on the parents earnings records if a Disabled Adult Child. These benefits may continue until age 65 or older subject to cost of living allowance increases.

6. DIVORCED SURVIVOR'S BENEFITS

Divorced or former spouses are also eligible for both regular retirement benefits and widow's or widower's disability retirement benefits under the decedent's earnings record even while the disabled widow or widower's benefits are being paid to the current widow or widower. The divorced spouse must have been married for at least ten (10) years before the divorce became final to be eligible under the deceased worker's earnings record. The divorced spouse is entitled to the same widow or widower's benefits provided that they meet the requirements listed above and the divorced spouse has either not remarried or waits to remarry after age 60.

The divorced spouse may be eligible for DIB based on his/her own earnings record or SSI or remain on the parents earnings records if previously found to satisfy the standards for a Disabled Adult Child. These benefits may continue until age 65 or older subject to cost of living allowance increases.

In order to receive regular retirement benefits based on the deceased workers earnings record, the divorced spouse must have been married to the deceased spouse for at least ten (10) years before the divorce becomes final, the divorced spouse is at least sixty two (62) years and unmarried. In addition, the fact that one divorced spouse applies for regular retirement benefits will not affect or prevent the current widow or widower from receiving widow's or widower's disability benefits provided that they meet the requirements listed above. Neither the present nor the former divorced spouse will be penalized with a reduction in benefits because the other spouse applies as well.

7. DEPENDENT PARENTS AGE 62 AND OLDER

Dependent parents age 62 and older are also eligible for disability benefits based on the death of a working child. The dependent parent has to prove first that they are not eligible for a higher benefit based on their own earnings record. Second, they must prove dependency which means that they must prove that they are more than fifty (50) per cent dependent on the deceased working child in order to receive benefits.

The benefits that the dependent parents receive will be shared with other surviving family members assuming that there are surviving family members.

C. TAX ISSUES INVOLVING SOCIAL SECURITY DISABILITY BENEFITS

Social Security disability benefits may be subject to federal income taxes depending upon the amount of back benefits awarded and current benefits in a single tax year. If the claimant's total income from Social Security disability benefits and all other sources of income is \$24,999 or less, the claimant does not owe any federal income taxes. If the claimant's total amount of disability benefits exceeds \$25,000 for one single year, the claimant would be subject to federal income taxes. If the claimant's combined taxable income from disability benefits and all other sources of income exceed \$25,000, the disability benefits would be subject to federal income taxes. However, unlike other sources of income, only eighty five (85%) per cent of the total disability benefits are subject to federal income taxes.

Unlike regular Social Security disability benefits, Social Security disability benefits as a practical matter cannot be repaid to the United States Treasury with a later tax deduction for the repayment that can be done with regular Social Security disability benefits.

IV. ATTORNEY FEE ISSUES

On June 22, 2009, the maximum fee for representing claimants in Social Security disability cases at the administrative level throughout the Social Security Administration including the Appeals Council was increased to six thousand (\$6,000) dollars for individuals applying for disability benefits. This increase means that all fee agreements entered into after June 22, 2009 should reflect the higher fee charged to the client. In addition, legislation is pending in the current Congress to provide cost of living allowance increases each year that was sponsored by Congressman John Lewis. This legislation should be supported by everyone attending this program that wants to handle Social Security disability cases.

There are two ways that a representative can be paid for representing claimants seeking disability benefits. The first way is to have the claimant sign a contingent fee agreement stating that the fee is limited to the lesser of twenty five (25%) per cent or six thousand (\$6,000) dollars whichever is less. An example of an appropriate contingent fee agreement is contained in the materials. The second way is through a fee petition is much more complicated and requires the completion of a form as well as submission of hours and dates when work was done on the case. An example of an appropriate fee petition is contained in the materials

Overpayments are treated differently than claimants applying for disability benefits. An overpayment may occur under several different circumstances including errors by the Social Security Administration concerning the amount due and owing to the claimant for back benefits, current benefits or if the claimant resumes work and engages in substantial gainful activity. Substantial gainful activity is defined as earning more than one thousand (\$1,000) dollars per month while receiving disability benefits. Overpayments may also occur if the claimant fails to

report earned income to the local office. In order to represent claimants in overpayment cases, one is required to enter into a separate fee agreement that calls for payments on a hourly basis. An attorney will not be entitled to back benefits because there are no back benefits and therefore the normal contingent fee agreement is not applicable. The retained amount paid to the attorney(s) must be held in escrow until either an Administrative Law Judge or the Social Security Administration approves a fee petition containing the amount of the fee. The fee can only be taken if the Social Security Administration approves the fee petition. It is generally advisable not to ask for a retainer in excess of six thousand (\$6,000) dollars to handle the claim through the administrative levels of the Social Security Administration.

A troubling development is the issue of attorneys fees under the Equal Access to Justice Act (EAJA) involving federal court work. These type of attorneys fees are potentially greater than six thousand (\$6,000) dollars and are awarded as a result of cases being filed in federal court on behalf of claimants that are unjustly denied Social Security disability benefits. Nevertheless, EAJA fees are sent directly to the claimants and not to the attorneys. If a claimant has outstanding liens that are owed to the federal government, the payment may then be attached to repay the liens. Examples of such liens include student loans, income tax liabilities, tuition reimbursement. The Fourth Circuit affirmed this practice in *Stephens et. rel. R.E. v. Astrue* 2009 W.L. 1241572 (May 7, 2009) agreeing that the fees go directly to the claimant and not to the attorney.

In 2010, the Supreme Court resolved the conflict between the circuits and held unanimously that the fee belongs to the claimant and not the attorneys. See, *Astrue v. Ratliff*, S.Ct. (2010) Thus, the fee is then subject to liens that the federal government may have against the claimant in all circuits before the fee may be paid to the claimant. As a result of the decision, a fee agreement must now include a special provision that permits the attorney to receive the fee and the United States attorney's office must recognize the provision in the fee agreement. To date, the United States attorney's office in Maryland is recognizing the provisions in the fee agreement that permit the fee to go directly to the attorney and not to the claimant. It is uncertain how long the practice with remain in effect.

FEE AGREEMENT – BENEFIT CASES

The undersigned claimant and attorney/representative hereby agree as follows to the payment of a fee to the latter. Both understand and agree that the amount of the fee may not exceed

the lesser of Twenty-Five Percent (25%) of past-due benefits or Six Thousand Dollars (\$6,000.00). Claimant is informed that, if he or she is entitled to past-due benefits, the Social Security Administration will notify him or her and the attorney/ representative in writing of the amount of the past-due benefits and the maximum fee that may be charged. After claimant has received that written notice, he or she has fifteen (15) days to object to the payment of the maximum fee by filing a written statement with the Administrative Law Judge.

Claimant certifies that the attorney/representative has explained to him or her the fee amounts allowed by the Social Security Administration, and knowingly consents to the award of a fee in accordance with the statements set forth herein.

In addition, if requested I agree to reimburse my attorney for any expenses incurred in obtaining medical information pertinent to my case.

This fee agreement is for representation before all levels of the Social Security Administration only.

ATTORNEY/REPRESENTATIVE
Lebau and Neuworth , LLC

CLAIMANT

DATE: _____

DATE: _____

APPROVAL OF FEE AGREEMENT

I approve the fee agreement between the claimant and his other attorney/representative subject to the conditions that the claim results in past due benefits.

My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove of any other aspect of the fee agreement.

DATE APPROVED

Administrative Law Judge
Office of Disability Adjudication and Review

**PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A
CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION**
**IMPORTANT
INFORMATION
ON REVERSE SIDE**

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

I request approval to charge a fee of _____ Fee \$ _____ (Show the dollar amount)

for services performed as the representative of _____

My Services Began: _____ / _____ / _____
Month Day Year

My Services Ended: _____ / _____ / _____
Month Day Year

Mr.
Mrs.
Ms.

Type(s) of claim(s)

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

1. Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
2. Have you and your client entered into a fee agreement for services before SSA? ☐ YES ☐ NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ _____ and ☐ See attached
3. (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? ☐ YES ☐ NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? ☐ YES ☐ NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: _____ \$ _____
Source: _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
4. Have you received, or do you expect to receive, reimbursement for expenses you incurred? ☐ YES ☐ NO
If "yes," please itemize your expenses and the amounts on a separate page.
5. Did you render any services relating to this matter before any State or Federal court? ☐ YES ☐ NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings? \$ _____
Please attach a copy of the court order if the court has approved a fee.
6. Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? ☐ YES ☐ NO
7. Have you been disqualified from participating in or appearing before a Federal program or agency? ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative

Date:

Address (include Zip Code)

Firm with which associated, if any

Telephone No. and Area Code

[Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

☐ I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.

OR

☐ I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant

Date

Address (include Zip Code)

Telephone No. and Area Code

FEE PETITION – BENEFIT CASES

AFFIDAVIT OF RICHARD P. NEUWORTH

I am submitting this Affidavit concerning the fee petition on behalf of

1. I am a partner of the law firm of Lebau & Neuworth, LLC.
2. I have represented hundreds of claimants and assisted them in obtaining Social Security disability benefits over a twenty five year period.
3. I represented n from his initial claim until he was approved for benefits by the Administration at the reconsideration level. I was assisted by my assistant Diane Eisemann. Ms. Eisemann assists me in preparing Social Security disability cases and has done so for over three years.
4. Mr. 's case was complex and required us to contact his treating physicians and do other work.. I reviewed Mr. 's case with Ms. Eisemann nearly every week for months. I obtained benefits for Mr. without any further reviews as a result of the medical records and other work that I performed on his behalf.
5. My billing rate since May 2007 is four hundred (400) dollars per hour. Ms. Eisemann's billing rate is one hundred (100) dollars per hour.
6. Mr. signed the attached Appointment of Representative form designating this Firm to represent him with his claim for Social Security disability benefits. Mr. also signed the attached Fee Agreement.
7. Mr. received an award in back benefits in excess of \$18,076. Accordingly, this Firm is requesting a fee of \$4,500.based on the fee agreement signed by Mr. , the services that we performed and expenses that we incurred on his behalf.

I swear and affirm under the penalties of perjury under the laws of the United States and 28 U.S.C. Section 1746 that all of the information contained in this Affidavit is true and correct to the best of my knowledge, information and belief.

Richard Neuworth

Date

FEE PETITION - BENEFIT CASES

TIME SHEETS

8/25/08. 2.5 hours transportation and initial meeting with client to sign forms at Laurel office

8/26/08 .10 review case with Diane Eisemann

9/10/08. .10 review case with Diane Eisemann

9/17/08 . 10 discuss case with Diane Eisemann

09/27/2008 .10 review status of case with Diane Eisemann

10/04/2008 .10 review status of case with Diane Eisemann

10/11/2008 .10 review status of case with Diane Eisemann

10/18/2008 .10 review status of case with Diane Eisemann

10/25/2008 .10 review status of case with Diane Eisemann

11/2/2008 .10 review status of case with Diane Eisemann

11/09/2008 .10 review status of case with Diane Eisemann

11/16/2008 .10 review status of case with Diane Eisemann

11/30/2008 .10 review status of case with Diane Eisemann

12/6/2008 .10 review status of case with Diane Eisemann

12/13/2008 .10 review status of case with Diane Eisemann

12/20/2008 .10 review status of case with Diane Eisemann

01/3/2009 .10 review status of case with Diane Eisemann

01/10/09 .10 review status of case with Diane Eisemann

01/17/2009 .10 review status of case with Diane Eisemann

01/24/2009 .10 review status of case with Diane Eisemann

01/31/2009 .10 review status of case with Diane Eisemann

02/04/09-.30 de resent Form 1696, 1695, fee agreement via certified mail to SSA

02/04/2009-.10 de faxed status request letter to SSA
02/06/2009 .10 review status of case with Diane Eisemann
02/13/2009 .10 review status of case with Diane Eisemann
02/20/2009 .10 review status of case with Diane Eisemann
02/27/2009 .10 review status of case with Diane Eisemann
03/04/2009 .10 review status of case with Diane Eisemann
03/11/2009 .10 review status of case with Diane Eisemann
03/23/09 .10 review status of case with Diane Eisemann
03/30/09 .10 review status of case with Diane Eisemann
04/06/09 .10 review status of case with Diane Eisemann
04/13/09 .10 review status of case with Diane Eisemann
****10/30/09 .50 prepare fee petition
10/13/2009 .15 letter to client's widow about fee petition

FEE AGREEMENT – OVERPAYMENT CASES

This fee agreement is between and Lebau and Neuworth, LLC for representation before an Administrative Law Judge for a Social Security disability hearing concerning an alleged overpayment of benefits. Client has paid a four thousand (\$4,500) five-hundred dollar retainer. Client understands that Attorneys will be charging a fee at the rate of two hundred twenty (225) dollars per hour for representation solely before the Administrative Law Judge. Client also understands that Attorneys will charge the above-captioned amount regardless of the result obtained on behalf of the client.

Claimant

Lebau and Neuworth LLC
BY: Richard Neuworth

Date

Date

SOCIAL SECURITY CONTINGENCY FEE AGREEMENT

I hereby employ Lebau and Neuworth, Attorneys at Law, as my attorneys to represent me in Federal Court on my social security case. In the event the Social Security Administration (SSA) favorably decides my case, in whole or in part, then I agree that my attorneys shall charge and receive a fee equal to 25% of all past due benefits which are awarded to my family and myself. My attorneys agree to file a fee petition as may be required by the Social Security Administration or federal court, and agree not to charge any fee higher than that which is provided for or finally approved by the Social Security Administration or any court of law. I agree to be responsible for payment of all fees and expenses in accordance with this agreement.

I agree to assign any and all attorney's fees and expenses, including filing fees, awarded by the Court in my federal court action under the Equal Access to Justice Act to my attorneys, Lebau and Neuworth, LLC.

In addition to the fee, I agree to pay reasonable expenses, which are incurred in my representation, including, but not limited to, expenses for filing fees and associated costs for service of the complaint on the United States Government.

My attorneys make no guarantee regarding winning my social security claim, although my attorneys may give me his opinion about my chances of winning from time to time.

I agree to assist and cooperate with the Law Firms in obtaining necessary evidence and/or the attendance of witnesses. I agree to promptly notify the Law Firms of any change in my medical condition and any changes in my ability to work. I will promptly notify the Law Firms of any changes in my address or telephone numbers. If I fail to do so, and the Law Firms are unable to contact me after reasonable effort, then the Law Firm may terminate its representation of me without further notice.

I have read this or it has been read to me and I understand what I am signing on this
the _____ day of _____, 20____.

Claimant: _____

Social Security Number: _____

ACCEPTED:

Attorney
Lebau and Neuworth

Representing Social Security Claimants • Processing Center Telephone Contact Information

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Online

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Information

Disability Cases for Claimants Under Age 54

Office of Disability Operations

SSN Range (Using first 5 digits of SSN)	Phone
001-00 to 234-27	410-965-1147
234-28 to 374-52	410-966-8479
374-53 to 489-52	410-966-3907
489-53 to 999-99	1-877-626-6363

Disability Cases for Claimants Age 54 and Older

PC1: Northeastern Processing Service Center

SSN Jurisdiction (Based on the first 3 digits of SSN): 001-134

SSN Range (Using first 3 digits of SSN)	Phone
001-134	718-557-3501

PC2: Mid-Atlantic Program Service Center

SSN Jurisdiction (Based on the first 3 digits of SSN): 135-222, 232-236

SSN Range (Using last 4 digits of SSN)	Phone
---	-------

http://www.ssa.gov/representative/pet_contact_info.html of 4/30/2010 8:25:38 AM

Representing Social Security Claimants - Processing Center Telephone Contact Information

0000-0908	215-597-8328
0909-1817	215-597-2833
1818-2726	215-597-8464
2727-3635	215-597-3663
3636-4544	215-597-7747
4545-5453	215-597-5616
5454-6362	215-597-5606
6363-7271	215-597-3841
7272-8180	215-597-7916
8181-9089	215-597-2382
9090-9999	215-597-1912
PC3: Southeastern Processing Service Center SSN Jurisdiction (Based on the first 3 digits of SSN): 223-231, 237-267, 400-428, 588-595	
SSN Range (Using last 4 digits of SSN)	Phone
0000-0666	205-801-8580
0667-1333	205-801-9630
1334-1999	205-801-3660
2000-2666	205-801-4060
2667-3333	205-801-3950
3334-3999	205-801-4030
4000-4666	205-801-3830
4667-5333	205-801-4130
5334-5999	205-801-4180
6000-6666	205-801-4330
6667-7333	205-801-4380
7334-7999	205-801-4430
8000-8666	205-801-4480
8667-9333	205-801-4530
9334-9999	205-801-4580
PC4: Great Lakes Program Service Center SSN Jurisdiction (Based on first 5 digits of SSN): 288-01 to 302-99, 316-01 to 399-99, 700-01 to 728-99, 731-01 to 731-99	

http://www.ssa.gov/representation/pcl_contact_information (2 of 19) 5/2/10 8:26:23 AM

Representing Social Security Claimants - Processing Center Telephone Contact Information

SSN Range (Using first 5 digits of SSN)	Phone	Voice Prompt Selection Determined by Last 4 digits of SSN	
268-01 to 302-99 316-01 to 399-99 700-01 to 728-99 731-01 to 731-99	312-575-5100	0000-2499 2500-4999 5000-7499 7500-9999	Press 1 Press 2 Press 3 Press 4
PC5: Western Program Service Center SSN Jurisdiction (Based on the first 3 digits of SSN): 501-504, 516-524, 526-576, 586, 600-626, 646-647, 650-653, 680, 750-751			
SSN Range (Using last 4 digits of SSN)	Phone		
0000-0833	510-970-2200		
0834-1666	510-970-4200		
1667-2499	510-970-4250		
2500-3332	510-970-2300		
3333-4165	510-970-2350		
4166-4999	510-970-4300		
5000-5832	510-970-2400		
5833-6665	510-970-4400		
6666-7499	510-970-4450		
7500-8332	510-970-2500		
8333-9165	510-970-4500		
9166-9999	510-970-4550		
PC6: Mid-America Processing Service Center SSN Jurisdiction: See Below			
SSN Range (Using first 3 digits of SSN)	Phone		
303-315, 429-500, 505-515, 525, 627-645, 646-649, 659-665, 676-679, 732	816-936-3910		

http://www.ssa.gov/representation/pc_contact_info.htm (3 of 4) 5/5/2010 6:26:28 AM

III. APPLYING FOR SOCIAL SECURITY DISABILITY BENEFITS AND STEPS IN THE DISABILITY PROCESS

The Social Security Administration has a multi-step process that can provide benefits to claimants at any step in the process.

There are three ways to apply for benefits. One may call 1-800-772-1213, by computer at www.ssa.gov, or by going through an appointment to the local office of the Social Security Administration throughout Maryland.

The Social Security Administration provides an annual benefit statement that advises each claimant about both their regular and disability benefits if the claimant was previously employed. The statements are mailed approximately three months before the claimant's birthday. The statement may be obtained by calling 1-800-772-1213 and asking for a Form 704. This important document provides a record of the claimant's earnings history, the number of credits that accumulated to the date of the statement and states how much that the benefits will be if a claimant applies for benefits. However, it does not include the latest year of earned income. Therefore, it is useful to obtain that amount as well so that the claimant can determine how much that he or she might receive if obtaining disability insurance benefits.

Recently, the Social Security Administration unveiled its new electronic retirement estimator on its website. Benefit estimates can be produced after a few points and clicks and the input of some personal information.

Social Security may require the following documents in order to file a claim for one or more of the seven types of benefits:

- Birth Certificate
- Marriage Certificate
- Divorce papers, if applicable
- Proof of death (death certificate or funeral home notice)
- Survivor's Social Security number as well as the decedent's
- The deceased's children's Social Security number
- W-2 forms of federal self-employment tax return for most recent year
- Bank accounts and account for direct deposit
- Statement of Assets and the type of assets if applicable

Other important items that need to be obtained at the outset include:

- Names and addresses of treating physicians
- Medications prescribed for the claimant
- The date when the claimant stopped working
- The amount of earned income received by the claimant if he or she is still working
- The amount of unearned income received by the claimant if the claimant is applying for SSI
- Any prior denial letters that the claimant has received in order to determine when the next appeal must be filed by in the process
- Signed medical authorizations that are HIPAA compliant.

Identifying Information for Possible Direct Payment of Authorized Fees**Information About the Claimant**

First Name		Middle Name	
Last Name	Suffix	Social Security Number [] [] [] - [] [] - [] [] [] []	
Wage Earner's Name <i>if different than above</i>		Wage Earner's Social Security Number <i>if different</i> [] [] [] - [] [] - [] [] [] []	
Type of Benefits	<input type="checkbox"/> Title II (RSDI) <input type="checkbox"/> Title XVI (SSI)		

Information about You, the Representative

Name		Social Security Number [] [] [] - [] [] - [] [] [] []	
P.O. Box, Street, Apt., or Suite No.		City	
State	ZIP Code or Postal Zone	Country	
Phone Number (including area code)		Fax Number (optional)	

Employer Identification Number (EIN), if applicable. If you are representing the claimant(s) as a partner or an employee of a firm or other business entity, you may provide the EIN of the firm or business. See instructions on Page 2 for more information.

[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Information about Other Claimants You are Representing in Connection with this Claim

List below the Social Security Numbers and names of all other claimants not mentioned above. If all claimants will not fit on this form, list on a separate form or blank paper.

Claimant's Social Security Number	Claimant's Name
[] [] [] - [] [] - [] [] [] []	
[] [] [] - [] [] - [] [] [] []	
[] [] [] - [] [] - [] [] [] []	
[] [] [] - [] [] - [] [] [] []	
[] [] [] - [] [] - [] [] [] []	

To SSA STAFF: After the information on this form is entered into the appropriate system(s), immediately shred the form. Under no circumstances should this form be scanned, placed in a claims file or otherwise retained.

Section II: Your Representational Standing

Check one of the boxes below.

Are you currently in good standing and admitted to practice law before the U.S. Supreme Court; a U.S. Federal, state, territorial, insular possession, or District of Columbia court; or a member of a state bar if that membership carries with it the authority to practice law in that state?

☒ Yes (Go to Section III)

☐ No (Go to Section IV)

NOTE: If you are not in the business of providing services to Social Security claimants and beneficiaries, but will be appointed as a representative for a relative, friend, or other acquaintance, YOU DO NOT NEED TO COMPLETE THIS FORM.

Section III: Your Bar and Court Information

Provide information for one state, U.S. territory, or U.S. Federal Court in which you currently are in good standing and have the right to practice law.

Court or Bar	Year Admitted (YYYY)	Court or Bar License Number (If one issued)
	0	

Section IV: Your Information as a Representative

All representatives must complete this section.

1. Your Address for Receipt of Notices☐ Same as Home Address in Section I

Street Line 1

Line 2

City State

ZIP/Postal Code

Country(if outside the U.S.)

2. Business Telephone Number (if different from that provided in Section I.)**Business Fax Number** (Optional)

Country/Area Code Phone Number Extension

Country/Area Code Phone Number

3. Business Email Address (Optional)**4. Did you check "Yes" in Section II OR have you been notified by us that you are eligible for direct payment of your fees?**☐ Yes☐ No (Go to Section VI)**5. What is your preferred payment method?**☐ Direct Deposit to U.S. Bank - I am the owner or co-owner of this account. (You must be the owner or co-owner)Type of Financial Account ☐ Checking ☐ Savings

Routing Number

Account Number

OR

☐ Check - Will be mailed to the Notice Address**6. Your Tax Address** (This is the address where we will send your FORM 1099-MISC)☐ Same as Home Address☐ Same as Notice Address in 1 in this section

Street Line 1

Line 2

City State

ZIP/Postal Code

Country(if outside the U.S.)

Complete this section if your work as a representative will be affiliated with a firm or organization. If you work for more than one firm or organization complete and attach as many copies of this section as needed. You will need an EIN in order to complete this section.

1. **Employer Identification Number (EIN)**
(See your W-2 or contact the firm or organization to get this number.)

--	--	--	--	--	--	--	--

2 **Your Address for Receipt of Notices** ☐ Same as home address in Section I
☐ Same as notice address in Section IV

[illegible]

City _____ State _____

[illegible][illegible]

Business Fax Number (Optional) _____

- ☐ Same as home number in Section I
☐ Same as business number in Section IV

Country/Area Code	Phone Number	Extension	Country/Area Code	Phone Number
-------------------	--------------	-----------	-------------------	--------------

5. What is your preferred payment method?

- ☐ **Direct Deposit to U.S. Bank**
☐ Same bank information as provided in Section IV
OR
☐ Direct deposit to the account shown below. I am the owner or co-owner of this account. (You must be the owner or co-owner of the account):

Type of Financial Account ☒ Checking ☐ Savings**Routing Number**[illegible]

Account Number

[illegible]

OR

- ☐
- Check - Will be mailed to the Notice Address on this page

Complete this section if your work as a representative will be affiliated with a firm or organization. If you work for more than one firm or organization complete and attach as many copies of this section as needed. You will need an EIN in order to complete this section.

1. **Employer Identification Number (EIN)**
(See your W-2 or contact the firm or organization to get this number.)[illegible]

2 **Your Address for Receipt of Notices** ☐ Same as home address in Section I
☐ Same as notice address in Section IV

[illegible]

City

[illegible]

State

--	--

ZIP/Postal Code

[illegible]

Country (If outside the U.S.)

[illegible]3. **Business Telephone Number**

☐ Same as home number in Section I
☐ Same as business number in Section IV

Business Fax Number (Optional) _____

Country/Area Code	Phone Number	Extension	Country/Area Code	Phone Number
-------------------	--------------	-----------	-------------------	--------------

4. Business Email Address (Optional)

5. What is your preferred payment method?

☐ Direct Deposit to U.S. Bank

☐ Same bank information as provided in Section IV

OR

☐ Direct deposit to the account shown below. I am the owner or co-owner of this account. (You must be the owner or co-owner of the account)

Type of Financial Account ☒ Checking ☐ Savings**Routing Number**

--	--	--	--	--	--	--	--	--

Account Number

[illegible]

OR

☐ Check - Will be mailed to the Notice Address on this page

Section VI: Attestations and Questions for Representation

You **MUST ATTEST** to these statements and complete the following questions.

1. **I understand and will comply with SSA laws and rules relating to the representation of parties, including the Rules of Conduct and Standards of Responsibility for Representatives.**

I will not charge, collect, or retain a fee for representational services that SSA has not approved or that is more than SSA approved, unless a regulatory exclusion applies.

I will not threaten, coerce, intimidate, deceive, or knowingly mislead a claimant or prospective claimant, or beneficiary, regarding benefits or other rights under the Social Security Act.

I will not knowingly make or present, or participate in making or presenting, false or misleading oral or written statements, assertions, or representations about a material fact or law concerning a matter within SSA's jurisdiction.

I am aware that if I fail to comply with any SSA laws and rules relating to representation, I may be suspended or disqualified from practicing as a representative before SSA.

☐ **I attest to all of the above.**

2. **Have you ever been:**

- a. **Suspended or prohibited from practice before SSA or any other Federal program or agency?**

☐ Yes (Explain below.)

☐ No

- b. **Disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney?**

☐ Yes (Explain below.)

☐ No

- c. **Convicted of a violation under Section 206 or 1631(d) of the Social Security Act?**

☐ Yes (Explain below.)

☐ No

- d. **Disqualified from representing a claimant as a current or former officer or employee of the United States?**

☐ Yes (Explain below.)

☐ No

3. **For each Yes answer in 2, provide the information below regarding that event (Attach copies of this page if you need more space.)**

Federal Program or Agency, or Court or Bar Name:

Bar Number (provide the Bar Number if you have one AND you answered "Yes" to 2b)

Year Admitted (provide the year if you answered "Yes" to 2b)

Beginning Date of:

Ending Date: (if ended)

Brief Description of Circumstances:

Section VII: General Attestations

You **MUST ATTEST** to these statements.

I will not divulge any information that SSA has furnished or disclosed about a claim or prospective claim, unless I have the claimant's consent or there is a Federal law or regulation authorizing me to divulge this information.

I have in place reasonable administrative, technical, and physical security safeguards to protect the confidentiality of all personal information I receive from SSA, to avoid its loss, theft, or inadvertent disclosure.

I will not omit or otherwise withhold disclosure of information to SSA that is material to the benefit entitlement or eligibility of claimants or beneficiaries, nor will I cause someone else to do so, if I know or should know, that this would be false or misleading.

I will not use Social Security program words, letters, symbols, branding, or emblems in my advertising or other communications in a way that conveys the false impression that SSA has approved, endorsed, or authorized me, my communications, or my organization, or that I have some connection with or authorization from SSA.

I will update this registration if my personal, professional or business affiliation information changes, including information related to disbarments, suspensions or sanctions.

I am aware that if I fail to comply with SSA laws and rules, I could be criminally punished by a fine or imprisonment or both, and I could be subject to civil monetary penalties.

I understand that SSA will validate the information I provide.

☐ I attest to all of the above.

Perjury Statement

I agree that a copy of this signed Form SSA-1699 will have the same force and effect as the original.

I declare under penalty of perjury that I have examined all of the information on this application and it is true and correct to the best of my knowledge.

Signature of Person Identified in Section I (You must sign your OWN name.)

Date

Social Security Administration

Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number - -
Wage Earner (If Different)	Social Security Number - -

Part I APPOINTMENT OF REPRESENTATIVE

I appoint this person, _____

(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

- ☐ Title II (RSDI)
 ☐ Title XVI (SSI)
 ☐ Title XVIII (Medicare Coverage)
 ☐ Title VIII (SVB)

This person may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

- ☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

- ☐ I appoint, or I now have, more than one representative. My main representative is _____

(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code) () -	Fax Number (with Area Code) () -	Date

Part II ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part II satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney who is participating in the direct fee payment demonstration project.

- ☐ I am a non-attorney. I am not participating in the direct fee payment demonstration project.

I have been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ Yes ☐ No

I have been disqualified from participating in or appearing before a Federal program or agency. ☐ Yes ☐ No

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code) () -	Fax Number (with Area Code) () -	Date

Part III (Optional) WAIVER OF FEE

I waive my right to charge and collect a fee under sections 208 and 1631(d)(2) of the Social Security Act. I release my client (the claimant) from any obligations, contractual or otherwise, which may be owed to me for services I have provided in connection with my client's claim(s) or asserted right(s).

Signature (Representative)	Date
----------------------------	------

Part IV (Optional) WAIVER OF DIRECT PAYMENT by Attorney or Non-Attorney Eligible to Receive Direct Payment

I waive only my right to direct payment of a fee from the withheld past-due retirement, survivors, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to request fee approval and to collect a fee directly from my client or a third party.

Signature (Representative Waiving Direct Payment)	Date
---	------

Form SSA-1696-U4 (05-2008) ef (05-2008)
Destroy Prior EditionsTAKE OR SEND ORIGINAL TO SSA AND RETAIN A COPY FOR YOUR RECORDS
(4 Copies: File, Claimant, Representative, ODAR)

STEP ONE OF THE DISABILITY PROCESS – THE INITIAL LEVEL

The first level of the benefit process is at the local office. The local offices are located in all major counties in Maryland. Claims may be started not only by a claimant but also by close family relatives, guardians and other personal representatives.

The claimant must complete a six (6) page questionnaire describing their previous work over the last fifteen (15) years including the tools used and/or whether or not the claimant was a supervisor, disabilities, health care providers and medications and reasons for disabilities. Other forms include authorizations to release medical information to the Social Security Administration.³ The local office will review the application and occasionally refer the claimant to a state disability determination service operated by the State of Maryland.

The average length of the process takes six (6) months. The overwhelming majority of claims are denied. In fact, ninety (90) per cent of the claims are denied at the initial level.

Four situations may warrant critical care processing procedures:

- The claimant's illness is terminal.
- The claimant is without and is unable to obtain food, medicine or shelter.
- The claimant is suicidal or homicidal.
- The case has been delayed an inordinate amount of time (such as sixty days longer than the average processing time for the office in question and there is either a public or congressional or high priority inquiry on the case.

Typically, the claims that will be paid at the initial level are AIDS (not hiv) or cancer diagnoses that will last more than twelve (12) months or incurable illnesses involving hospice or receiving hospice care. In addition, transplant cases such as heart/lung, liver or bone marrow transplants (excluding kidney and corneal transplants) will be approved. Chronic dependence on cardiopulmonary life-sustaining devices and/or home oxygen involving chronic pulmonary or heart failure. These claims are commonly referred to as TERI (terminal illness) and they also require special handling. The allegation of terminal illness or other illnesses listed above may be made by a claimant, friend, family member, doctor or other medical source).

The claimant can improve the odds somewhat depending on how cooperative the treating health care providers are supplying objective medical evidence and reports to the Social Security Administration. The local offices will not give weight to the reports of health care providers that do not have a doctor's degree.

The denial letter often can provide useful information. For example, the denial letter may state that the claimant is unable to do their past work or that the illness or diagnosis has affected their ability to function. As a result, the claimant may receive benefits at a higher level when the

³ If the claimant is incompetent, a medical power of attorney may be necessary to obtain medical records.

claims are more closely scrutinized by Administrative Law Judges or other Social Security offices.

WHOSE Records to be Disclosed

 Form Approved
OMB No. 0950-0623

NAME (First, Middle, Last)

SSN

 Birthday
(mm/dd/yy)

**AUTHORIZATION TO DISCLOSE INFORMATION TO
THE SOCIAL SECURITY ADMINISTRATION (SSA)**
**** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW ****

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT All my medical records; also education records and other information related to my ability to perform tasks. This includes specific permission to release:

- All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) including, and not limited to:
 - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
 - Drug abuse, alcoholism, or other substance abuse
 - Sickle cell anemia
 - Records which may indicate the presence of a communicable or venereal disease which may include, but are not limited to, diseases such as hepatitis, syphilis, gonorrhea and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS); and tests for HIV.
 - Gene-related impairments (including genetic test results)
- Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
- Copies of educational tests or evaluations, including Individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
- Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DD8 (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

TO WHOM

The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including contract copy services, and doctors or other professionals consulted during the process. [Also, for international claims, to the U.S. Department of State Foreign Service Post.]

PURPOSE

Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

EXPIRES WHEN

This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

PLEASE SIGN USING BLUE OR BLACK INK ONLY

IF not signed by subject of disclosure, specify basis for authority to sign

INDIVIDUAL authorizing disclosure

☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

SIGN

(Parent/guardian/personal representative sign here if two signatures required by State law)

Date Signed

Street Address

Phone Number (with area code)

City

State

ZIP

WITNESS

I know the person signing this form or am satisfied of this person's identity:

SIGN

IF needed, second witness sign here (e.g., if signed with "X" above)

SIGN

Phone Number (or Address)

Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law.

Form SSA-827 (6-2007) ef (06-2007) Use 2-2003 and Later Editions Until Supply is Exhausted

Page 1 of 2

STEP TWO OF THE DISABILITY PROCESS - RECONSIDERATION LEVEL

After the claimant is usually denied at the initial level, they must file a Reconsideration of the denial within sixty-five (65) days. Although, the denial notice states sixty (60) days, five additional days are permitted for mailing. If the claimant is mentally ill and cannot complete the paperwork in a timely fashion, the requirements are often waived by the local office. The forms that must be filed include the following:

- Request for Reconsideration (filed electronically)
- Disability Report Appeal (filed electronically)
- Authorization to Disclose Information to the SSA (five copies)

All written information should be sent either by certified mail or by overnite mail. The Social Security Administration is notorious for losing documents.

The process is slow and usually takes six months or longer. The success rate is again low because approximately only fifteen (15) per cent of the requests for reconsideration for benefits are approved by the Social Security Administration.

Critical care processing may take place based on the factors listed above for Step 1.

The claimant can change the odds somewhat depending on how cooperative the treating physician(s) are supplying objective medical evidence and/or residual functional capacity forms (physical and mental) to the Social Security Administration. These forms should be completed by health care providers that have a doctor's degree. The claimant can also seek congressional assistance from either their Congressperson or Senators.

REQUEST FOR RECONSIDERATION

(Do not write in this space)

NAME OF CLAIMANT		NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.)
CLAIMANT SSN - -	CLAIMANT CLAIM NUMBER (If different from SSN) - -	SUPPLEMENTAL SECURITY INCOME (SSI) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER - -
SPOUSE'S NAME (Complete ONLY in SSI cases)		SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases) - -

CLAIM FOR (Specify type, e.g., retirement, disability, hospital/medical, SSI, SVB, etc.)

I do not agree with the determination made on the above claim and request reconsideration. My reasons are:

SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY
(See the three ways to appeal in the *How To Appeal Your Supplemental Security Income (SSI) Or Special Veterans Benefit (SVB) Decision* instructions.)
"I want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB). I've read about the three ways to appeal. I've checked the box below."

☐ Case Review ☐ Informal Conference ☐ Formal Conference

EITHER THE CLAIMANT OR REPRESENTATIVE SHOULD SIGN - ENTER ADDRESSES FOR BOTH

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

CLAIMANT SIGNATURE			SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE <input type="checkbox"/> NON-ATTORNEY <input type="checkbox"/> ATTORNEY		
MAILING ADDRESS			MAILING ADDRESS		
CITY	STATE	ZIP CODE - -	CITY	STATE	ZIP CODE - -
TELEPHONE NUMBER (include area code) () -		DATE	TELEPHONE NUMBER (include area code) () -		DATE

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

See list of initial determinations

- | | |
|---|--|
| 1. HAS INITIAL DETERMINATION BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO | 2. CLAIMANT INSISTS ON FILING <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3. IS THIS REQUEST FILED TIMELY?
(If "NO", attach claimant's explanation for delay and attach any pertinent letter, material, or information in Social Security office.) | <input type="checkbox"/> YES <input type="checkbox"/> NO |

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125)

SOCIAL SECURITY OFFICE ADDRESS

- ☐
- NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300)
-
- ☐
- REQUIRED DEVELOPMENT ATTACHED
-
- ☐
- REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS

ROUTING INSTRUCTIONS (CHECK ONE) →	<input type="checkbox"/> DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER)	<input type="checkbox"/> PROGRAM SERVICE CENTER	<input type="checkbox"/> DISTRICT OFFICE RECONSIDERATION
	<input type="checkbox"/> ODO, BALTIMORE	<input type="checkbox"/> OIO, BALTIMORE	<input type="checkbox"/> CENTRAL PROCESSING SITE (SVB)

NOTE: Take or mail the signed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records.

STEP THREE – HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE

The next level of appeal concerns a hearing before an Administrative Law Judge. As noted above, the appeal must be filed within sixty five (65) days of receipt of the adverse Reconsideration decision. In addition, the time limits will be waived if the claimant can demonstrate that they were mentally incapacitated. Three documents must be completed including:

- Request for Hearing by Administrative Law Judge (filed electronically)
- Disability Report Appeal Cover Sheet (filed electronically)
- Authorization to Disclose Information to the SSA (five copies)

This level is the most important in the entire process because sixty four (64) per cent of the cases are approved for benefits at this level.

In Maryland, cases are assigned to Administrative Law Judges by the Office of Disability Adjudication and Review at four separate locations. Cases in Baltimore City and other counties in the metropolitan Baltimore area are assigned to the Office of Disability Adjudication and Review located in Baltimore City. Cases in Montgomery, Prince Georges and other counties in the Washington metropolitan area are assigned to the Washington, D.C. office. Cases in Western Maryland counties such as Alleghany and Garrett are heard in Cumberland, Maryland and are now assigned to judges from the Baltimore Hearing office formerly the Richmond, Virginia office. Finally, cases on the Eastern Shore are heard and assigned to Delaware judges. The principal problem with all locations is a shortage of judges and staff at all locations to hear the volume of cases. The number of disability claims have risen dramatically due to the aging of the population in general.⁴ SSA is also converting its claims system from a paper to an electronic file that adds further delays as well. As a result, significant delays frequently occur in all types of cases. SSA has added Attorney Advisors⁵ to screen some cases at this level and will award benefits without a hearing if the Attorney Advisor believes that the case can be decided without vocational or claimant testimony. Under the current system, the claimant cannot ask that the case be assigned to an Attorney Advisor for a pre-hearing review.

Most judges have vocational experts to testify at a hearing to determine whether or not a claimant is disabled under the regulations. It is important to know whether or not the claimant is over age 50 because different rules may apply depending on which type of benefits that the claimant is applying for. Currently, evidence may be submitted both before and after the hearing on the claimant's medical condition.

⁴ There are 750,000 claims pending currently compared to less than 350,000 in 2000. Currently, the delay in Baltimore is 589 days from the filing of the paperwork for a hearing.

⁵ Currently, there is one Attorney advisor assigned to the Baltimore hearing office even though that office is now processing even more claims including the ones from the far Western Maryland counties.

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

(Take or mail the signed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records)

See
Privacy Act Notice

1. CLAIMANT NAME	CLAIMANT SSN - -	2. WAGE EARNER NAME, IF DIFFERENT
3. CLAIMANT CLAIM NUMBER, IF DIFFERENT - -	4. SPOUSE'S NAME, IF NOT WAGE EARNER	SPOUSE'S CLAIM NUMBER OR SSN - -

5. I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I disagree with the determination made on my claim because:

An Administrative Law Judge of the Social Security Administration's Office of Disability Adjudication and Review or the Health and Human Services will be appointed to conduct the hearing or other proceedings in your case. You will receive notice of the time and place of a hearing at least 20 days before the date set for a hearing.

6. I have additional evidence to submit. <input type="checkbox"/> Yes <input type="checkbox"/> No Name and address of source of additional evidence: (Please submit it to the hearing office within 10 days. Your servicing Social Security Office will provide the address. Attach an additional sheet if you need more space.)	7. Do not complete if the appeal is a Medicare issue. Check one of the blocks: <input type="checkbox"/> I wish to appear at a hearing. <input type="checkbox"/> I do not wish to appear at a hearing and I request that a decision be made based on the evidence in my case. (Complete Waiver Form HA-4608)
--	--

You have a right to be represented at the hearing. If you are not represented but would like to be, your Social Security office will give you a list of legal referral and service organizations. If you are represented and have not done so previously, complete and submit form SSA-1696 (Appointment of Representative) unless you are appealing a Medicare issue. Regardless of the issue you are appealing, you should complete No. 8 and your representative (if any) should complete No. 9. If you are represented and your representative is not available to complete this form, you should also print his or her name, address, etc., in No. 9. I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

8. (CLAIMANT'S SIGNATURE) _____ (DATE) _____	9. (REPRESENTATIVE'S SIGNATURE/NAME) _____ (DATE) _____
ADDRESS _____	(ADDRESS) <input type="checkbox"/> ATTORNEY; <input type="checkbox"/> NON ATTORNEY;
CITY _____ STATE _____ ZIP CODE _____	CITY _____ STATE _____ ZIP CODE _____
TELEPHONE NUMBER () - _____ FAX NUMBER () - _____	TELEPHONE NUMBER () - _____ FAX NUMBER () - _____

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION-ACKNOWLEDGMENT OF REQUEST FOR HEARING

10. Request received for the Social Security Administration on _____ by: _____ (Date) (Print Name)	
(Title)	(Address) (Servicing FO Code) (PC Code)
11. Was the request for hearing received within 65 days of the reconsidered determination? <input type="checkbox"/> YES <input type="checkbox"/> NO If no is checked, attach claimant's explanation for delay; and attach copy of appointment notice, letter, or other pertinent material or information in the Social Security office.	
12. Claimant is represented <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> List of legal referral and service organizations provided	15. Check all claim types that apply: <input type="checkbox"/> RSI only (RSI) <input type="checkbox"/> Title II Disability-worker or child only (DIWC) <input type="checkbox"/> Title II Disability-Widow(er) only (DIWW) <input type="checkbox"/> SSI Aged only (SSIA) <input type="checkbox"/> SSI Blind only (SSIB) <input type="checkbox"/> SSI Disability only (SSID) <input type="checkbox"/> SSI Aged/Title II (SSAC) <input type="checkbox"/> SSI Blind/Title II (SSBC) <input type="checkbox"/> SSI Disability/Title II (SSDC) <input type="checkbox"/> Title XVIII (HI/SMI) <input type="checkbox"/> Title VIII Only (SVB) <input type="checkbox"/> Title VIII/Title XVI (SVB/SSI) <input type="checkbox"/> Other - Specify: _____
13. Interpreter needed <input type="checkbox"/> Yes <input type="checkbox"/> No Language (Including sign language): _____	
14. Check one: <input type="checkbox"/> Initial Entitlement Case <input type="checkbox"/> Disability Cessation Case <input type="checkbox"/> Other Postentitlement Case	
16. HO COPY SENT TO: _____ HO on _____ <input type="checkbox"/> CF Attached: <input type="checkbox"/> Title II; <input type="checkbox"/> Title XVI; <input type="checkbox"/> Title VIII; <input type="checkbox"/> T XVIII; <input type="checkbox"/> Title II CF held in FO <input type="checkbox"/> Electronic Folder <input type="checkbox"/> CF requested <input type="checkbox"/> Title II; <input type="checkbox"/> Title XVI; <input type="checkbox"/> Title VIII; <input type="checkbox"/> T XVIII (Copy of email or phone report attached)	
17. CF COPY SENT TO: _____ HO on _____ <input type="checkbox"/> CF Attached: <input type="checkbox"/> Title II; <input type="checkbox"/> Title XVI; <input type="checkbox"/> Title XVIII <input type="checkbox"/> Other Attached: _____	

STEP FOUR – THE APPEALS COUNCIL

If a claim is denied or a partially favorable decision is obtained, one must appeal such a decision to the Appeals Council within sixty-five days of the date of the adverse or partially favorable decision. The appeal must be in writing and should be sent by certified or overnite mail.

The Appeals Council's address for Maryland cases is:

Social Security Administration
Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, Virginia 22041-3255

Currently, the appeal may include additional or new medical or other vocational evidence developed after the unfavorable decision may be submitted to the Appeals Council.

Favorable actions taken by the Appeals Council generally are to remand the case back to the Office of Disability Adjudication and Review and the Administrative Law Judge. The Appeals Council will rarely if ever order the payment of benefits. The Appeals Council also will not order the Office of Disability Adjudication and Review to conduct a new hearing within any set period of time. The Appeals Council also may order that a new Administrative Law Judge hear the remanded case however that action is usually not taken until and unless the same Administrative Law Judge denies the claim on more than one occasion.

Unfavorable actions by the Appeals Council will be dated and require that your next step will be federal court review depending on where the claimant is living. The council upholds the Administrative law Judge's decisions approximately seventy (70) per cent of the time.

Generally, the time period for action by the Appeals Council is anywhere from ten (10) months up to two years. Again, the process is lengthy and time consuming. As a result, the claimant may want to file a new application for benefits while the Appeals Council is considering whether or not to remand the case.

REQUEST FOR REVIEW OF HEARING DECISION/ORDER

(Do not use this form for objecting to a recommended ALJ decision.)

(Either mail the signed original form to the Appeals Council at the address shown below, or take or mail the signed original to your local Social Security office.)

See Privacy Act Notice

1. CLAIMANT	2. WAGE EARNER, IF DIFFERENT
3. SOCIAL SECURITY CLAIM NUMBER	4. SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete ONLY in Supplemental Security Income Case)

5. I request that the Appeals Council review the Administrative Law Judge's action on the above claim because:

ADDITIONAL EVIDENCE

If you have additional evidence submit it with this request for review. If you need additional time to submit evidence or legal argument, you must request an extension of time in writing now. If you request an extension of time, you should explain the reason(s) you are unable to submit the evidence or legal argument now. If you neither submit evidence or legal argument now nor within any extension of time the Appeals Council grants, the Appeals Council will take its action based on the evidence of record.

IMPORTANT: Write your Social Security Claim Number on any letter or material you send us.

SIGNATURE BLOCKS: You should complete No. 6 and your representative (if any) should complete No. 7. If you are represented and your representative is not available to complete this form, you should also print his or her name, address, etc. in No. 7.

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

6. CLAIMANT'S SIGNATURE		DATE		7. REPRESENTATIVE'S SIGNATURE		<input type="checkbox"/> ATTORNEY <input type="checkbox"/> NON-ATTORNEY	
PRINT NAME				PRINT NAME			
ADDRESS				ADDRESS			
(CITY, STATE, ZIP CODE)				(CITY, STATE, ZIP CODE)			
TELEPHONE NUMBER () - () - ()		FAX NUMBER () - () - ()		TELEPHONE NUMBER () - () - ()		FAX NUMBER () - () - ()	

THE SOCIAL SECURITY ADMINISTRATION STAFF WILL COMPLETE THIS PART

8. Request received for the Social Security Administration on _____ by: _____ (Date) (Print Name)			
(Title)	(Address)	(Serving FC Code)	(FC Code)
9. Is the request for review received within 85 days of the ALJ's Decision/Dismissal? <input type="checkbox"/> Yes <input type="checkbox"/> No			
10. If "No" checked: (1) attach claimant's explanation for delay, and (2) attach copy of appointment notice, letter or other pertinent material or information in the Social Security Office.			
11. Check one: <input type="checkbox"/> Initial Entitlement <input type="checkbox"/> Termination or other		12. Check all claim types that apply: <input type="checkbox"/> Retirement or survivors (RSB) <input type="checkbox"/> Disability-Worker (DWC) <input type="checkbox"/> Disability-Widow(er) (DWA) <input type="checkbox"/> Disability-Child (DWC) <input type="checkbox"/> SSI Aged (SSIA) <input type="checkbox"/> SSI Blind (SSIB) <input type="checkbox"/> SSI Disability (SSID) <input type="checkbox"/> Title VIII Only (SVB) <input type="checkbox"/> Title VIII/Title XVI (SVB/SS) <input type="checkbox"/> Other - Specify: _____	
<p>APPEALS COUNCIL OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SSA 5107 Leesburg Pike FALLS CHURCH, VA 22041 - 3255</p>			

STEP FIVE – FEDERAL DISTRICT COURT REVIEW

Appeals to the appropriate United States District Court must be taken within sixty (60) days of the date of the unfavorable Appeals Council action. It is estimated that fifty (50) per cent of the cases result in favorable action for the claimants. Favorable action includes remands as well as reversals.

Electronic filing is not required for these type of cases when they are filed in the United States District Court for the District of Maryland.

STEP SIX – FOURTH CIRCUIT REVIEW

Appeals to the Fourth Circuit are no different than any other type of civil appeal. There are no statistics about reversal rates at this level.

V. SOCIAL SECURITY BENEFITS - IN PERSONAL INJURY CASES

Social Security benefits represent important additional compensation that is available to certain victims of negligence. It is estimated that eighty (80,000,000) million people will reach age 65 over the next twenty (20) years after 2010 and will be entitled to benefits under the Old Age, Security and Disability Insurance Act (OASDI – Social Security)⁶. Hundreds of thousands annually apply for Social Security disability benefits.

Unlike other types of benefits, Social Security benefits are not subject to liens that require repayment. In addition, claimants may continue to receive the various benefits after the litigation has ended. Furthermore, the benefits often cannot be raised by defense counsel as an offset in personal injury litigation in Maryland because there is no collateral source rule.⁷

Claimants obtaining Social Security disability benefits based on their own earnings record have other advantages. First, these claimants will be eligible for Medicare coverage twenty nine (29) months after the onset of disability as found by SSA, even when the claimant is under 65. Medicare coverage, unlike private insurance, covers pre-existing conditions including bodily injuries. Medicare eligibility also may offer additional damages under a private cause of action under the Medicare Secondary Payer Act.⁸ Secondly, in addition to the disability benefits, these claimants remain eligible to receive retirement benefits at their normal retirement age, without any reduction for receipt of the disability benefits while receiving annual cost of living

⁶ Richard Wolf, *Social Security Hits First Wave of Boomers*, USA Today (October 9, 2007)

⁷ The collateral source rule has never been used in Maryland.

⁸ 42 USC 1395 (y)

increases. These claimants may also work on a part-time basis after being declared disabled and still retain their disability benefits.

USING SOCIAL SECURITY DISABILITY BENEFITS IN PERSONAL INJURY CASES

A. FINDINGS THAT THE CLAIMANT IS TOTALLY AND PERMANENTLY DISABLED AND/OR THAT THE CLAIMANT MAY NOT BE ABLE TO PERFORM HIS OR HER PAST RELEVANT WORK

The multi-step Social Security disability process offers assistance concerning proof of economic loss in a personal injury case in two discernible ways. First, the Social Security Administration may issue a favorable or partially favorable decision thus strengthening a wage loss claim in the personal injury case. Second, the Social Security Administration may deny the disability claim, but may well make findings that the claimant could not perform his or her past relevant work. Thus, an unfavorable decision for purposes of the disability claim may still help substantiate economic loss in the personal injury case.

B. EXPERT WITNESSES CONCERNING ECONOMIC LOSS AND INABILITY TO WORK OR PERFORM PAST RELEVANT WORK

As part of the disability process, the Social Security Administration may employ both vocational and medical experts. These experts may well produce reports or opinions supporting existing expert witness testimony in the personal injury case. Furthermore, the vocational expert and/or medical experts may also serve as an expert witness in the personal injury case. The fact that these experts were originally retained by the Social Security Administration may provide important objective evidence concerning economic loss, emotional pain and suffering and other damage issues in the underlying negligence action.

C. THE MEDICARE SECONDARY PAYER ACT AND PRIVATE CAUSE OF ACTION ARISING FROM PAYMENTS BY MEDICARE OF MEDICAL BILLS IN PERSONAL INJURY LITIGATION

As noted above, those individuals that qualify for DIB or several other types of Social Security disability benefits are eligible for Medicare coverage regardless of age, twenty nine months after the Social Security administration has determined the claimant to be disabled. If Medicare pays medical bills in a personal injury action, the Medicare recipient has additional rights which include bringing a private cause of action on behalf of Medicare.

The private cause of action is set forth in 42 U.S.C. § 1395y, and provides:

(A) Private cause of action

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

The purpose of the private cause of action statute is to help the government recover conditional payments from insurers or other primary payers, to encourage private parties to enforce Medicare's rights, and to save money for the Medicare system.

Thus, the victim has the option to collect double the amount of medical bills paid by Medicare if the insurer in the underlying personal injury action goes to trial and loses the case. The private cause of action may also be used to obtain larger settlements as well to induce a recalcitrant insurer to settle the case.

If a claimant should return to the workforce prior to age 65, they may retain their Medicare benefits for up to one hundred eight (108) months before losing Medicare coverage.

D. PART-TIME WORK AND CONTINUED RECEIPT OF SOCIAL SECURITY DISABILITY BENEFITS

The Social Security disability benefit process offers a unique opportunity for disabled claimants to return to part-time work . Once a claimant is determined to be disabled by the Social Security Administration, they can rejoin the work force and earn up to nine hundred seventy five (975) dollars a month while retaining their Social Security disability benefits and Medicare coverage. Claimants may earn unlimited amounts while working full-time for a nine (9) month period while retaining disability benefits. However, they will be re-evaluated at the end of the nine month period by the Social Security Administration to determine whether or not they are still disabled

E. SSI DISABILITY BENEFITS FOR ADULTS AND CHILDREN AND SETTLEMENTS OF PERSONAL INJURY CASES

SSI disability benefits for adults and children present specific problems concerning possible settlement of personal injury cases. The problem is created by direct receipt of the proceed of a personal injury settlement. Nevertheless, there are reasonable and workable solutions to the problem. The problem can be resolved without loss of SSI benefits by creating either a special needs of SSI trust.

VI. SOCIAL SECURITY DISABILITY BENEFITS AND WORKERS COMPENSATION BENEFITS

One of the most misunderstood relationships and source of potential legal malpractice actions is the relationship between workers compensation and Social Security disability benefits. If one receives Social Security disability benefits, the workers compensation benefits are never reduced under any circumstances. The only time that Social Security disability benefits may be

reduced at all occurs if the combined Social Security disability benefits and workers compensation benefits in one year exceed eighty (80) per cent of the claimant's highest five years of earnings. Therefore, one needs to obtain three specific items from the claimant in order to determine whether or not the Social Security benefits are subject to reduction. Those items are (1) a copy of the entire earnings record that is easily obtainable from the claimant and that is automatically produced on an annual basis by the Social Security Administration, (2) a copy of the total amount by the workers compensation insurer in one year and (3) a copy of the entire Social Security disability benefits payable in one year. After obtaining all three items, one can then calculate whether or not there will or will not be any reduction to the Social Security disability benefits.

There are numerous ways of avoiding the eighty (80) per cent rule to reduce Social Security disability benefits when one attempts to settle a workers compensation case. The most commonly used method is to annuitize the payments on annual basis so that the total never exceeds eighty per cent of the combined amounts of Social Security disability and workers compensation. A second method is to restrict payment of the workers compensation settlement agreement until the claimant begins collecting regular retirement benefits. A third method is to reach an agreement with the workers compensation carrier so that the payout of the workers compensation settlement never exceeds eighty per cent.

A special problem exists with SSI cases and workers compensation benefits as was noted in the earlier section dealing with personal injury cases. The problem is magnified by the receipt of temporary total disability benefits through workers compensation cases that can result in suspension or termination of SSI benefits.

In order to maximize the value of your personal injury cases, practitioners need to be aware of the Social Security programs described above. These benefits will become a far more important part of personal injury litigation as the baby boom generation ages and begins to retire.

NOSSCR Acronym List

With thanks to Charles T. Hall, Esq.

A	
AACT	Abbreviated Account query - Title II
AAJ	Administrative Appeals Judge - AC adjudicator
AC	Appeals Council
ACE	Average Current Earnings - factor used in WC offset calculation
ADL	Activities of Daily Living
AI	Aged Individual - Title XVI
ALJ	Administrative Law Judge
AME	Agreed Medical Examiner - WC term
AME	Average Monthly Earnings - benefit calculation factor
AOD	Alleged Onset of Disability or Alleged Onset Date
AR	Acquiescence Ruling
AUSA	Assistant U.S. Attorney

B	
BEIA	Bureau of Hearings and Appeals - former name of ODAR
BO	Branch Office - sub-office of a DO
BWO	Blind Work Expenses

C	
CAB	Civil Actions Branch of AC
CALJ	Chief ALJ
CDB	Childhood Disability Benefits - Title II
CE	Consultative Examination or Examiner
CFR	Code of Federal Regulations
CIB	Child's Insurance Benefits - Title II
COBRA	Comprehensive Omnibus Budget Reconciliation Act
COLA	Cost of Living Adjustment

D	
DAA	Drug Addiction and/or Alcoholism
DAC	Disabled Adult Child - Title II
DED	Disability Evaluation Division - the state agency
DEQY	Detailed Earnings Query - Title II
DDS	Disability Determination Service - the state agency
DHHS	Department of Health and Human Services - former SSA parent agency
DI	Disabled Individual - Title XVI
DIB	Disability Insurance Benefits - Title II
DISM	Same as DSM, the preferred acronym
DISM	Disability Insurance State Manual
DIWC	Disabled Individual, Worker or Child - Title II claim type
DJ	District Judge
DLI	Date Last Insured - Title II disability insured status
DLM	Date Last Met - same as DLI
DO	District Office - local SSA field office
DOB	Date Of Birth
DOE	Date Of Entitlement - Title II
DOT	Dictionary of Occupational Titles
DSM	Diagnostic & Statistical Manual of Mental Disorders

E	
EAJA	Equal Access to Justice Act
EOD	Established Onset of Disability
EPE	Extended Period of Eligibility - Title II
ER	Earnings Record

NOSSCR Acronym List

F	
FBM	First Benefit Month
FBR	Federal Benefit Rate - Title XVI
FIB	Father's Insurance Benefits - Title II
FMAX	Family Maximum - Title II benefit limit
FO	Field Office - a DO or a BO
FOIA	Freedom of Information Act

G	
GLPSC	Great Lakes Program Service Center - PC4

H	
HA	Hearing Assistant
HALLEX	Hearings, Appeals and Litigation Law [Lex] - OHA policy manual
HCFA	Health Care Finance Administration - DHHS Medicare agency
HE	Hearing Examiner - former title of ALJ
HIA	Health Insurance, Part A - Medicare
HIB	Health Insurance, Part B - Medicare
HOCALJ	Hearing Office Chief ALJ
HOA	Hearing Office Administrator
HOM	Hearing Office Manager
HOSA	Hearing Office Systems Administrator
HPI	Hearing Process "Improvement"

I	
IAP	Interim Assistance Program - Title XVI
IAR	Interim Assistance Reimbursement - Title XVI
ICD	International Classification of Diseases

ID	Initial Determination
IEP	Initial Enrollment Period - SMIB
IFA	Individualized Functional Assessment - former SSI child dib. standard
IME	Independent Medical Examiner - WC term
IRWE	Impairment Related Work Expense
ISM	In-Kind Support & Maintenance - Title XVI

L	
LMER	Last Met Earnings Requirement - same as DII
LPC	Legal Processing Clerk
LSDP	Lump-Sum Death Payment

M	
MA	Medical Advisor - former title of an ME
MAMPSC	Mid-America Program Service Center - PC6
MATPSC	Mid-Atlantic Program Service Center - PC2
MBR	Master Beneficiary Record - Title II
ME	Medical Expert - designated physician at OHA level
MFR	Medical Evidence of Record [also MEOR]
MIB	Mother's Insurance Benefits - Title II
MRFC	Mental RFC
MSS	Medical Source Statement

N	
NEPSC	North Eastern Program Service Center - PC1
NH	Number Holder - "Wage Earner" - Title II

NOSSCR Acronym List

ASDI	Old-Age, Survivor & Disability Insurance - Title II
CRO	Office of Central Records Operations - Baltimore, MD - PC9
ODAR	Office of Disability, Adjudication and Review (formerly OHA)
ODIO	Office of Disability & International Operations - Baltimore, MD - PC8
ODO	Office of Disability Operations - ODIO component - PC7
OGC	Office of General Counsel
OHA	Office of Hearings and Appeals - former name of ODAR
OIG	Office of the Inspector General
OOH	Occupational Outlook Handbook
OP	Over-Payment
OPIR	Office of Program Integrity Review
P	
PA	Privacy Act
PASS	Plan to Achieve Self Support - Title XVI
PCI	Payment Cycling Indicator - staggered benefit payment dates
PE	Post Entitlement - Title II
PE	Post Eligibility - Title XVI
PEBES	Personal Earnings and Benefit Estimate Statement - Title II
PIA	Primary Insurance Amount - base benefit rate
PMV	Presumed Maximum Value - Title XVI income term
POMS	Program Operations Manual System - SSA claims manual
PPD	Permanent Partial Disability - WC term

PPS	Program Policy Statement - SSR precursor
PRUCOL	Permanent Residence Under Color Of Law
PRW	Past Relevant Work
PSC	Program Service Center

Q	
QA	Quality Assurance
QC	Quarter of Coverage - Title II
QMB	Qualified Medicare Beneficiary
QME	Qualified Medical Examiner - WC term

R	
RC	Regional Commissioner of SSA
RCAIJ	Regional Chief ALJ
RFC	Residual Functional Capacity
RFH	Request For Hearing
RFR	Request for Reconsideration
RIB	Retirement Insurance Benefits - Title II
RMO	Regional Management Officer
RO	Regional Office - OHA management unit
RPO	Regional Program Officer
RRB	Railroad Retirement Board

S	
SDI	State Disability Insurance
SDM	Single Decision Maker
SEPSC	SouthEastern Program Service Center - PC3
SEQY	Summary Earnings Query - Title II
SGA	Substantial Gainful Activity
SHA	Supervisory Hearing Assistant
SIB	Spouse's Insurance Benefits - Title II
SLMB	Special Low-income Medicare Beneficiary

NOSSCR Acronym List

SMIB	Supplemental Medical Insurance Benefits - same as HIB
SSA	Social Security Administration
SSA	Supervisory Staff Attorney
SSDC	Social Security (Title II) and SSI (Title XVI) concurrent claim
SSDI	Social Security Disability Insurance - Title II
SSI	Supplemental Security Income - Title XVI
SSID	SSI Disability
SSID	SSI Display - computer query
SSIRD	SSI Record Display - computer query
SSLP	Social Security Law and Practice - West Group
SSP	State Supplementary Payments - optional state SSI add-on
SSPG	Social Security Practice Guide - Matthew Bender
SSRS	Social Security Reporting Service - West Group
SSR	Social Security Ruling

T	
TID	Temporary Total Disability - WC term
TWP	Trial Work Period - Title II

U	
UI	Unearned Income - Title XVI
UI	Unemployment Insurance
UP	Under-Payment
USC	United States Code
USCA	United States Code Annotated
UWA	Unsuccessful Work Attempt

V	
VE	Vocational Expert
VR	Vocational Rehabilitation
VTR	Value of the one-Third Reduction - Title XVI

W	
WC	Worker's Compensation
WE	Wage Earner - Title II
WIB	Widow(er)'s Insurance Benefits - Title II
WNPSC	WesterN Program Service Center - PCS

Internet Resources:

www.ssa.gov	Official website of the Social Security Administration
www.justice.org	American Association for Justice/ formerly: The Association of Trial Workers of America (ATLA)
www.marylandassociationforjustice.com	Maryland Association for Justice (MAJ)
www.nosscr.org	National Organization of Social Security Claimant's Representative
www.aarp.org/money/social_security/	Social security resources for seniors presented by the AARP

APPENDIX

OLD-AGE, SURVIVORS, DISABILITY INSURANCE

Pt. 404
Subpt. P, App. 1

tion project beyond that date in order to assure the validity of the research. Each experiment and demonstration project will have a termination date (up to 10 years from the start of the experiment or demonstration project).

(43 FR 7575, Feb. 23, 1983; 52 FR 37605, Oct. 8, 1987; 56 FR 61687, Dec. 17, 1990; 62 FR 28451, July 18, 1997)

APPENDICES [Editorially supplied]

Appendix 1 to Subpart P of Part 404—Listing of Impairments

The body system listings in parts A and B of the Listing of Impairments will no longer be effective on the following dates unless extended by the Commissioner or revised and promulgated again.

1. Growth Impairment (100.00): July 1, 2010.
2. Musculoskeletal System (1.00 and 101.00): February 13, 2011.
3. Special Senses and Speech (2.00 and 102.00): February 20, 2013.
4. Respiratory System (3.00 and 103.00): July 1, 2010.
5. Cardiovascular System (4.00 and 104.00): January 13, 2011.
6. Digestive System (5.00 and 105.00): October 19, 2012.
7. Genitourinary Impairments (6.00 and 106.00): September 6, 2013.
8. Hematological Disorders (7.00 and 107.00): July 1, 2010.
9. Skin Disorders (8.00 and 108.00): July 9, 2012.
10. Endocrine System (9.00 and 109.00): July 1, 2010.
11. Impairments That Affect Multiple Body Systems (10.00 and 110.00): Oct. 31, 2013.
12. Neurological (11.00 and 111.00): July 1, 2010.
13. Mental Disorders (12.00 and 112.00): July 1, 2010.
14. Malignant Neoplastic Diseases (13.00 and 113.00): December 15, 2009.
15. Immune System Disorders (14.00 and 114.00): June 16, 2015.

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

- 1.00 Musculoskeletal System.
- 2.00 Special Senses and Speech.
- 3.00 Respiratory System.

- 4.00 Cardiovascular System.
- 5.00 Digestive System.
- 6.00 Genitourinary Impairments.
- 7.00 Hematological Disorders.
- 8.00 Skin Disorders.
- 9.00 Endocrine System.
- 10.00 Impairments That Affect Multiple Body Systems.
- 11.00 Neurological.
- 12.00 Mental Disorders.
- 13.00 Malignant Neoplastic Diseases.
- 14.00 Immune System Disorders.

1.00 Musculoskeletal System

A. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. Loss of function.

1. General. Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. The provisions of 1.02 and 1.03 notwithstanding, inflammatory arthritis is evaluated under 14.00 (see 14.00D6). Impairments with neurological causes are to be evaluated under 11.00ff.

2. How We Define Loss of Function in These Listings

a. General. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used. We will determine

Pt. 404

SOCIAL SECURITY—SELECTED REGULATIONS

Subpt. P, App. 1

C. Ankylosing spondylitis or other spondyloarthropathies, with:

1. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 45° or more of flexion from the vertical position (zero degrees); or

2. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 30° or more of flexion (but less than 45°) measured from the vertical position (zero degrees), and involvement of two or more organs/body systems with one of the organs/body systems involved to at least a moderate level of severity.

or

D. Repeated manifestations of inflammatory arthritis, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

14.10 Sjögren's syndrome. As described in 14.0007. With:

A. Involvement of two or more organs/body systems, with:

1. One of the organs/body systems involved to at least a moderate level of severity; and
2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

or

B. Repeated manifestations of Sjögren's syndrome, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.

- 100.00 Growth Impairment.
- 101.00 Musculoskeletal System.
- 102.00 Special Senses and Speech.
- 103.00 Respiratory System.
- 104.00 Cardiovascular System.
- 105.00 Digestive System.
- 106.00 Genitourinary Impairments.
- 107.00 Hematological Disorders.
- 108.00 Skin Disorders.
- 109.00 Endocrine System.
- 110.00 Impairments That Affect Multiple Body Systems.
- 111.00 Neurological.
- 112.00 Mental Disorders.
- 113.00 Malignant Neoplastic Diseases.
- 114.00 Immune System Disorders.

100.00 Growth Impairment

A. Impairment of growth may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. Bone age determinations should include a full descriptive report of medically acceptable imaging specifically obtained to determine bone age and must cite the standardization method used. Where appropriate medically acceptable imaging must be obtained currently as a basis for adjudication under 100.08, views or scans of the left hand and wrist should be ordered. In addition appropriate medically acceptable imaging of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty. Medically acceptable imaging includes, but is not limited to, x-ray imaging, computerized axial tomography (CAT scan) or mag-

strates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (unusually completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h)(1) The term younger individual is used to denote an individual age 18 through 49. For individuals who are age 45-49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18-44. Accordingly, a finding of "disabled" is warranted for individuals age 45-49 who:

- (i) Are restricted to sedentary work,
- (ii) Are unskilled or have no transferable skills,
- (iii) Have no past relevant work or can no longer perform past relevant work, and
- (iv) Are unable to communicate in English, or are able to speak and understand English but are unable to read or write in English.

(2) For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

(3) Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 (or individuals age 45-49 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

(4) "Sedentary work" represents a significantly restricted range of work, and individuals with a maximum sustained work capability limited to sedentary work have very serious functional limitations. Therefore, as with any case, a finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual's medical impairment(s) and the limitations and restrictions attributable to it. Such evidence must support the finding that the individual's residual functional capacity is limited to less than the full range of sedentary work.

(5) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-44 even if they are illiterate or unable to communicate in English.

Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Result
201.12	Advanced age	Limited or less	Unskilled or semi-skilled	Disabled
201.32	do	do	Skilled or semi-skilled—skills not transferable	Do
201.48	do	do	Skilled or semi-skilled—skills transferable	Not disabled
201.54	do	High school graduate or above—does not provide for	Unskilled or semi-skilled	Disabled

SOCIAL SECURITY—SELECTED REGULATIONS

Code	Age	Education	Training and experience	Transferability
202.00	do	High school graduate or more provides for direct entry into skilled work.	do	Not dis-abled.
202.01	do	High school graduate or more does not provide for direct entry into skilled work.	Skilled or semiskilled skills not transferable.	Dis-abled.
202.02	do	do	Skilled or semiskilled skills transferable.	Not dis-abled.
202.03	do	High school graduate or more provides for direct entry into skilled work.	Skilled or semiskilled skills not transferable.	Do.
202.04	do	High school graduate or more provides for direct entry into skilled work.	Unskilled or none	Dis-abled.
202.05	do	do	do	do
202.06	do	do	do	do
202.07	do	do	do	do
202.08	do	High school graduate or more does not provide for direct entry into skilled work.	Unskilled or none	Dis-abled.
202.09	do	High school graduate or more provides for direct entry into skilled work.	do	Not dis-abled.
202.10	do	High school graduate or more does not provide for direct entry into skilled work.	Skilled or semiskilled skills not transferable.	Dis-abled.
202.11	do	do	do	do
202.12	do	do	do	do
202.13	do	do	do	do
202.14	do	do	do	do
202.15	do	do	do	do
202.16	do	do	do	do
202.17	do	do	do	do
202.18	do	do	do	do
202.19	do	do	do	do
202.20	do	do	do	do
202.21	do	do	do	do
202.22	do	do	do	do
202.23	do	do	do	do
202.24	do	do	do	do
202.25	do	do	do	do
202.26	do	do	do	do
202.27	do	do	do	do
202.28	do	do	do	do
202.29	do	do	do	do
202.30	do	do	do	do

1 See 202.00b.
2 See 202.00c.
3 See 202.00d.
4 See 202.00e.

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (ii) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,500 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing

numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(ii) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to

substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competencies for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional

capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skill demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for persons of advanced age who are closely approaching retirement age (age 60 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, illiteracy or inability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

Table No. 2—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medical Determinable Impairment

Code	Age	Education	Transferable Skills	Transferable Skills	Transferable Skills
0000	Advanced age	Limited or less	Unskilled or semi-skilled	Unskilled or semi-skilled	Unskilled or semi-skilled
0001	do	do	do	do	do
0002	do	do	do	do	do
0003	do	do	do	do	do
0004	do	do	do	do	do
0005	do	do	do	do	do
0006	do	do	do	do	do
0007	do	do	do	do	do
0008	do	do	do	do	do
0009	do	do	do	do	do
0010	do	do	do	do	do
0011	do	do	do	do	do
0012	do	do	do	do	do
0013	do	do	do	do	do
0014	do	do	do	do	do
0015	do	do	do	do	do
0016	do	do	do	do	do
0017	do	do	do	do	do
0018	do	do	do	do	do
0019	do	do	do	do	do
0020	do	do	do	do	do
0021	do	do	do	do	do
0022	do	do	do	do	do
0023	do	do	do	do	do
0024	do	do	do	do	do
0025	do	do	do	do	do
0026	do	do	do	do	do
0027	do	do	do	do	do
0028	do	do	do	do	do
0029	do	do	do	do	do
0030	do	do	do	do	do
0031	do	do	do	do	do
0032	do	do	do	do	do
0033	do	do	do	do	do
0034	do	do	do	do	do
0035	do	do	do	do	do
0036	do	do	do	do	do
0037	do	do	do	do	do
0038	do	do	do	do	do
0039	do	do	do	do	do
0040	do	do	do	do	do
0041	do	do	do	do	do
0042	do	do	do	do	do
0043	do	do	do	do	do
0044	do	do	do	do	do
0045	do	do	do	do	do
0046	do	do	do	do	do
0047	do	do	do	do	do
0048	do	do	do	do	do
0049	do	do	do	do	do
0050	do	do	do	do	do
0051	do	do	do	do	do
0052	do	do	do	do	do
0053	do	do	do	do	do
0054	do	do	do	do	do
0055	do	do	do	do	do
0056	do	do	do	do	do
0057	do	do	do	do	do
0058	do	do	do	do	do
0059	do	do	do	do	do
0060	do	do	do	do	do
0061	do	do	do	do	do
0062	do	do	do	do	do
0063	do	do	do	do	do
0064	do	do	do	do	do
0065	do	do	do	do	do
0066	do	do	do	do	do
0067	do	do	do	do	do
0068	do	do	do	do	do
0069	do	do	do	do	do
0070	do	do	do	do	do
0071	do	do	do	do	do
0072	do	do	do	do	do
0073	do	do	do	do	do
0074	do	do	do	do	do
0075	do	do	do	do	do
0076	do	do	do	do	do
0077	do	do	do	do	do
0078	do	do	do	do	do
0079	do	do	do	do	do
0080	do	do	do	do	do
0081	do	do	do	do	do
0082	do	do	do	do	do
0083	do	do	do	do	do
0084	do	do	do	do	do
0085	do	do	do	do	do
0086	do	do	do	do	do
0087	do	do	do	do	do
0088	do	do	do	do	do
0089	do	do	do	do	do
0090	do	do	do	do	do
0091	do	do	do	do	do
0092	do	do	do	do	do
0093	do	do	do	do	do
0094	do	do	do	do	do
0095	do	do	do	do	do
0096	do	do	do	do	do
0097	do	do	do	do	do
0098	do	do	do	do	do
0099	do	do	do	do	do

(c) However, the absence of any relevant work experience becomes a more significant adversity for persons of advanced age (65 and over). Accordingly, this factor, in combination with a limited education or less, militates against finding a vocational adjustment to even this substantial range of work and a finding of disability is appropriate. Further, for persons closely approaching retirement age (60 or older) with a work history of unskilled work and with marginal education or less, a finding of disability is appropriate.

Item	Age	Education	Previous work experience	Decision
228.01	20-24	Completed or more	Enrolled or more	Enrolled
228.02	25-29	Completed or more	None	Enrolled
228.03	30-34	Completed	Completed	Enrolled
228.04	35-39	Completed or more	Enrolled or non-enrolled while enrolled	Enrolled
228.05	40-44	25-29	Enrolled or non-enrolled while enrolled	Enrolled
228.06	45-49	High school graduate or more	Enrolled or more	Enrolled
228.07	50-54	High school graduate or more does not provide the degree entry into skilled work	Enrolled or non-enrolled while enrolled	Enrolled
228.08	55-59	25-29	Enrolled or non-enrolled while enrolled	Enrolled
228.09	60-64	High school graduate or more-enrolled for the first time into skilled work	Enrolled or non-enrolled while enrolled	Enrolled
228.10	65-69	Completed or more	None	Enrolled
228.11	70-74	Completed or more	Enrolled	Enrolled

Rule	Age	Education	Previous work experience	Decision
229.12	Skilled or semi-skilled—able to transferable	Da
231.12	Skilled or semi-skilled—able to transferable	Da
234.14	High school graduate or more	Unskilled or semi-skilled	Da
236.14	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da
236.16	Skilled or semi-skilled—able to transferable	Da
236.17	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da
236.18	Unskilled or semi-skilled	Da
236.19	Skilled or semi-skilled—able to transferable	Da
236.20	Skilled or semi-skilled—able to transferable	Da
236.21	High school graduate or more	Unskilled or semi-skilled	Da
236.22	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da
236.23	Skilled or semi-skilled—able to transferable	Da
236.24	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da
236.25	Unskilled or semi-skilled	Da
236.26	Skilled or semi-skilled—able to transferable	Da
236.27	Skilled or semi-skilled—able to transferable	Da
236.28	High school graduate or more	Unskilled or semi-skilled	Da
236.29	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da
236.30	Unskilled or semi-skilled	Da
236.31	Skilled or semi-skilled—able to transferable	Da
236.32	High school graduate or more—able to provide for direct entry into skilled work	Skilled or semi-skilled—able to transferable	Da

201.00. Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe (medically determinable impairment(s)). The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of “not disabled”. Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level, or prior work experience may be considered adverse.

60A FR 57644, Nov. 14, 1991; 66 FR 45188, Aug. 28, 2001; 66 FR 51154, Aug. 28, 2002; 73 FR 84191, Oct. 29, 2008]

SUBPART Q—DETERMINATIONS OF DISABILITY

Authority: 5 USC 20150, 221, and 302(a)(5) of the Social Security Act (42 USC 405(a), 481, and 602(a)(5)).

Source: 46 FR 29204, May 29, 1981; 52 FR 27541, July 23, 1987; 61 FR 5941, Feb. 15, 1996, unless otherwise noted.

GENERAL PROVISIONS

§ 404.1601 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Commissioner under title II of the Act. It also establishes the Commissioner's responsibilities in carrying out the disability determination function. Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.